

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

KEITH ALLAN DEVEREAUX,

Defendant/Movant.

Cause No. CR 12-64-GF-BMM  
CV 16-59-GF-BMM

ORDER DENYING  
§ 2255 MOTION AND DENYING  
CERTIFICATE OF APPEALABILITY

This case comes before the Court on a motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. Defendant Devereaux is a federal prisoner proceeding pro se. He seeks relief under the rule of *Johnson v. United States*, \_\_\_ U.S. \_\_\_, 135 S. Ct. 2551 (2015).

Devereaux pled guilty to committing a robbery in violation of the Hobbs Act, 18 U.S.C. § 1951(a) and (b)(1). Under the federal sentencing guidelines, his base offense level was 20. U.S.S.G. § 2B3.1(a). Devereaux received a five-level upward adjustment because he brandished or possessed a firearm, *id.* § 2B3.1(b)(2), and another two-level upward adjustment because he used pepper spray against another person, causing bodily injury, *id.* § 2B3.1(b)(3)(A). He also

received a three-level downward adjustment for acceptance of responsibility.

U.S.S.G. § 3E1.1. His total offense level was 24. Because he had six criminal history points, his criminal history category was III. Presentence Report ¶¶ 28-39, 40-56. His advisory sentencing guideline range was 63-78 months, and he was sentenced to serve 78 months in prison, to be followed by a three-year term of supervised release. *See* Judgment (Doc. 43) at 1-3.

Neither the offense to which Devereaux pled guilty nor any part of his advisory guideline calculation required the Court to determine what constitutes a “crime of violence.” *Johnson* has no application to Devereaux’s case.

A certificate of appealability is not warranted. Devereaux has not made a showing that he was deprived of a constitutional right. Because *Johnson* is not implicated in Devereaux’s case, reasonable jurists would find no basis to encourage further proceedings. 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Accordingly, IT IS HEREBY ORDERED as follows:

1. Devereaux’s motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255 (Doc. 47) is DENIED;
2. A certificate of appealability is DENIED. The Clerk of Court shall immediately process the appeal if Devereaux files a Notice of Appeal;
3. The Clerk of Court shall ensure that all pending motions in this case and

in CV 16-59-GF-BMM are terminated and shall close the civil file by entering judgment in favor of the United States and against Devereaux.

DATED this 6th day of June, 2016.

A handwritten signature in blue ink that reads "Brian Morris". The signature is fluid and cursive, with the first name "Brian" and last name "Morris" clearly distinguishable. Below the signature is a solid horizontal line.

Brian Morris  
United States District Court Judge